WISCONSIN SUPREME COURT
TUESDAY, OCTOBER 11, 2005
10:45 A.M.

03AP2968-CR State v. Charles E. Young

This is a review of a decision of the Wisconsin Court of Appeals, District II (headquartered in Waukesha), which affirmed a conviction in Kenosha County Circuit Court, Judge Michael Fisher presiding.

This case involves the arrest of a man who fled a parked car when a police officer approached. The question before the Supreme Court is whether the officer illegally seized the man within the meaning of the Fourth Amendment and, if so, whether the drugs that were found in the man's coat should have been disallowed as evidence at his trial.

Here is the background: At just before midnight on a Saturday night in October 2002, City of Kenosha Police Officer David Alfredson was patrolling in an area of the city where a number of night clubs and taverns operate when he spotted a parked car with Illinois plates and five occupants. He continued his patrol and returned between five and 10 minutes later to find that the people were still in the car. As he later testified, the length of time they were in the car aroused his suspicion that they were drinking or doing drugs. He pulled up nearby, illuminated the car with his squad light, and turned on his flashing lights. Then, a man – later identified as Charles E. Young – stepped out of the back seat of the vehicle and Alfredson ordered him to return to the car. He instead ran toward a nearby house and was trying the door when Alfredson grabbed him. Young slipped out of his coat and threw the coat into the house. Alfredson called for back-up and eventually the man was arrested. The officers retrieved his coat and found what they believed to be a container of marijuana in the pocket.

Young was charged with possession of marijuana, resisting an officer, and obstructing an officer. He pleaded not guilty and made a motion to suppress the drug evidence, arguing that it was the product of an illegal search. The judge denied the motion, concluding that the officer had reasonable cause to detain the vehicle and its occupants. The matter went to trial and a jury found Young guilty on all three counts.

Young appealed and the Court of Appeals upheld the conviction. The Court of Appeals concluded Young could not raise a Fourth Amendment violation because he had not been seized under the meaning of the Fourth Amendment: he did not submit to Alfredson's commands to return to the car. The Court of Appeals based its conclusion on a U.S. Supreme Court case[1] with similar facts: a parked car and a man who fled and tossed out drugs as police approached. In that case, the U.S. court held that the person was not considered seized because he did not submit to police authority and therefore does not have the right to later assert a Fourth Amendment violation. The Court of Appeals expressed deep concern about this caselaw, which the Wisconsin Supreme Court adopted in a 2001 ruling,[2] suggesting that it undid the right of a person to go on his way if an officer approaches and asks questions:

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[1] California v. Hodari D., 499 U.S. 621 (1991)
[2] State v. Kelsey C.R., 2001 WI 54, 243 Wis. 2d 422, 626 N.W.2d 777

> [A]fter Hodari D., this supposed right to "go on his way" becomes an empty right because it vests the police with the authority to pursue and detain anew. In short, the person is penalized for legal conduct while the police are rewarded for illegal conduct.

While the Court of Appeals concluded that this U.S. case dictated the ruling in the current case, it urged the state Supreme Court to revisit this question:

> We rarely express our concerns about an opinion we are duty bound to follow, much less a United States Supreme Court opinion, but we question the wisdom and reasoning of Hodari D. for the reasons set forth above.

Now, the state Supreme Court will consider whether Hodari D. should continue to control Fourth Amendment cases in Wisconsin.